

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/DTS)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

DANIEL MORGAN,

Civil Action No.: 18-cv-02740

Plaintiff,

**DECLARATION OF CHANDLER GRIVETTI IN SUPPORT OF
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

I, Chandler Grivetti, declare as follows:

1. I am a legal assistant at Kennedy Hodges, LLP, the law firm representing Plaintiff Daniel Morgan in the above-captioned matter.
2. I submit this declaration in opposition to Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1933] filed on June 5, 2019.
3. One of my primary duties at Kennedy Hodges is to order medical records on behalf of clients of the law firm. I work with our third-party record retrieval vendor, U.S. Legal Support, to process these requests.
4. On April 30, 2018, I requested medical records through U.S. Legal on behalf of Mr. Morgan from Black Hills Orthopedic & Spine Center in Rapid City, SD for the timeframe of January 1, 2013 through August 30, 2015. This facility was identified as the location of the original surgery. Due to the name of the facility, I

believed it to be the surgery center where Mr. Morgan's orthopedic surgery would have been performed.

5. In processing this request, we were notified by U.S. Legal that the custodian at the facility required a new HIPAA authorization. This issue was not brought up until August 2, 2018, at which point I worked with Mr. Morgan to have a new authorization signed. This was sent to U.S. Legal on August 13, 2018. I believe that this issue caused delay in processing the medical record request.
6. We received notification that the records were received from Black Hills Orthopedic & Spine Center in September 2018.
7. After the attorney assigned to the case reviewed the medical records and determined that the anesthesia records were not included, I sent an email to Jaime Lichlyter with U.S. Legal Support on December 5, 2018 requesting that she follow up with the custodian to obtain the anesthesiology records. I did not receive a response.
8. After checking for updates on the request through the U.S. Legal Support request dashboard, I emailed Jaime again on January 8, 2019 requesting an update on efforts to obtain the anesthesiology records. Again, I did not receive a response.
9. After checking for additional updates through the dashboard, I emailed Jaime with U.S. Legal Support again on February 7, 2019 requesting an update. Jaime emailed me back that same day stating that the custodian was being "non-compliant" and that additional steps would need to be taken to follow up with the custodian.

10. I sent a follow up email to Jaime on February 18, 2019 requesting an update on the status of obtaining the missing records. Jaime responded by email that same day stating that they were still following up on the request.

11. On April 1, 2019, we were informed by U.S. Legal that the custodian could not locate any anesthesia records for the surgery on February 19, 2014. At this point, we realized that U.S. Legal Support had followed up with the orthopedic facility and not the hospital where the surgery was performed.

12. Soon after, the record request was revised to Regional Health Rapid City Hospital. A new record request was initiated for this additional provider on April 16, 2019.

13. Since that time, we have diligently followed up with our record retrieval company through multiple emails to be kept apprised on the status of this request.

14. The records are still pending as of June 12, 2019.

15. Because of the issues in obtaining records through U.S. Legal Support, we have reached out to Mr. Morgan regarding obtaining records directly from the hospital. Mr. Morgan has stated that he has spoken with a representative at the hospital and they will be making the records available on the morning of June 13, 2019.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

June 12, 2019



Chandler Grivetti